

TENNECO OIL COMPANY
SUN OIL COMPANY

IBLA 75-402

Decided July 14, 1975

Appeal from a decision of the Utah State Office, Bureau of Land Management, declaring noncompetitive oil and gas lease Utah 025946-A terminated.

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Drilling -- Oil and Gas Leases: Extensions -- Oil and Gas Leases: Termination

Under the provisions of 43 CFR 3107.2-1(b)(2) (1973) an oil and gas lease which had been committed to a unit and extended as a result of production occurring within that unit, is not within its primary term but rather is held by production. Therefore, the diligent drilling extension provision of 43 CFR 3107.2-3 is not available as a method of further extension since that provision is limited to leases in their primary term.

APPEARANCES: Robert G. Pruitt, Jr., Esq., Salt Lake City, Utah, for the appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Tenneco Oil Company and Sun Oil Company appeal a decision of the Utah State Office, Bureau of Land Management, dated February 20, 1975, declaring noncompetitive oil and gas lease Utah 025946-A terminated effective November 30, 1974.

Noncompetitive oil and gas lease Utah 025946 was issued effective April 1, 1958, for an initial term of five years. The lease was extended for an additional term of five years pursuant to 43 CFR 192.120 (now 43 CFR 3107.1) and so long thereafter as oil or gas was produced in paying quantities. The lease would thus have run until

March 31, 1968. Lease Utah 025946-A was created by a partial assignment out of Utah 025946, effective December 1, 1967, and was extended for a two year period ending November 30, 1969.

By letter dated April 29, 1969, the Acting Regional Oil and Gas Supervisor, Geological Survey, informed appellant Tenneco Oil Company that its request for an expansion of the Upper Valley unit area to embrace, inter alia, the lands covered by lease Utah 025946-A had been approved effective March 1, 1969. By letter dated December 10, 1969, the BLM State Office informed the appellants that the subject lease had been indefinitely extended as a result of a discovery of oil and gas within the Upper Valley unit area prior to November 30, 1969. See 43 CFR 3107.4-2.

By decision dated June 20, 1973, the BLM State Office informed the appellants that pursuant to the automatic contraction provisions of section 2(e) of the Upper Valley unit agreement, the lands embraced by oil and gas lease Utah 025946-A had been entirely eliminated from the unit effective November 30, 1972. The subject lease was therefore extended to and including November 30, 1974, and so long thereafter as oil or gas was produced in paying quantities.

By agreement approved July 12, 1974, the subject lease was included in the Little Valley unit. By memorandum of December 23, 1974, the Acting District Engineer, Geological Survey, informed the BLM State Office that diligent drilling operations were in progress under the Little Valley unit agreement on November 30, 1974, and that the Geological Survey had no objection to the granting of lease extensions pursuant to 43 CFR 3107.2-3.

By decision of January 15, 1975, the BLM State Office held that lease Utah 025946-A could not be extended under the provisions of 43 CFR 3107. It noted that "for an oil and gas lease to be extended, drilling operations must have commenced prior to the end of its 'primary term.' 'Primary term' is defined in 43 CFR 3107.2-1(b)(2) as meaning the initial term as set forth in the lease. For a noncompetitive lease issued under section 17 of the Mineral Leasing Act, this means 10 years." The decision thereupon declared oil and gas lease U-025946-A terminated effective November 30, 1974. From this decision appellants have taken their appeal.

[1] The basic thrust of appellants' argument is that the State Office incorrectly applied a regulation which had been subsequently rescinded. The regulation change, which has since been repromulgated, involved the definition of primary term. Prior to the change, 43 CFR 3107.2-1(b) provided that "'Primary term' means all periods in the life of the lease prior to its extension by reason of production of oil or gas in paying quantities." On August 22, 1974, the Assistant Secretary of the Interior promulgated regulations, effective immediately, which, in relevant part, provided: "'Primary term' means the initial term as set forth in the lease. * * *" (39 F.R. 30352).

This regulation, however, was rescinded on October 9, 1974 (39 F.R. 36348), and instead republished as proposed rulemaking. The regulation was subsequently adopted.

The position of the appellants is that at the time of the action complained of, the regulation cited by the State Office was not in force. This Board has recently examined the problems emanating from this attempted amendment of the regulations. See Inexco Oil Co., 20 IBLA 134 (1975). It is unnecessary in the instant case to examine the rationale of that decision since the BLM State Office decision declaring the lease terminated was correct even under the original definition of "primary term."

We have noted above that the lease in the instant case had been committed to the Upper Valley unit and had been extended owing to production occurring under the unit agreement. The lease was thus held by production, albeit constructive. At the point in time when the lease was extended by reason of production occurring within the unit, its primary term ended. Ashland Oil Inc., 7 IBLA 58, 79 I.D. 532 (1972). See Seaboard Oil Co., 64 I.D. 405, 411 (1957). The extension sought for diligent drilling, however, is only available to leases in their primary terms. 43 CFR 3107.2-3. See Ashland Oil, Inc., supra. Thus, the BLM State Office correctly held that the lease terminated on November 30, 1974, in the absence of production of oil or gas in paying quantities.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge

